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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1957

No. [redacted] 109

REDDING PINE MILLS, INC., a corporation, and ROBERT B. TOOGOOD,
*Petitioners,*

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, DIXWELL L. PIERCE, Secretary of the State Board of Equalization of the State of California, and RAYMOND R. SCHULZE,
*Respondents.*

## PETITIONERS' REPLY BRIEF.

CARR & KENNEDY,
LAURENCE J. KENNEDY,
1555 East Street, Redding, California,
*Attorneys for Petitioners.*

LAURENCE W. CARR,
1555 East Street, Redding, California,
*Of Counsel.*

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1957

No. 1075

REDDING PINE MILLS, INC., a corporation, and ROBERT B. TOOGOOD,
*Petitioners,*

vs.

STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, DIXWELL L. PIERCE, Secretary of the State Board of Equalization of the State of California, and RAYMOND R. SCHULZE,
*Respondents.*

## PETITIONERS' REPLY BRIEF.

Pursuant to Rule 24(4) petitioners deem it desirable to file a brief reply to the brief of the respondent, State Board of Equalization of the State of California, in the above matter, in order to point up the

fallacy in the decision of the District Court of Appeal, and to point out the irrelevancy of the argument made by respondent in reply to petitioners' petition.

The decision of the Third District Court of Appeal of the State of California, which is the subject of review here, contains a falsely erroneous statement of both fact and law at page v of Appendix A to the petition and opening brief of petitioners. After stating a rule that has to do with the general "adjudicative" powers of administrative bodies, to the effect that they may be given subpoena powers and compel the attendance of witnesses in investigations, which proposition is not disputed by anyone connected with this case, the court then goes on to state as follows: "It has been so held, even where the person subpoenaed was not subject to regulation." *State ex rel. Railroad & Warehouse Com. v. Mees,* 235 Minn. 42 (49 N.W. 2d 386, 27 A.L.R. 2d 1197, 1206-1207).

Herein lies the error which we have attempted to have reviewed by the Supreme Court of the State of California and which we now contend must be rectified by a decision of this Court. The *Mees* case was *not an investigation.* The *Mees* case did not decide that a person not subject to regulation was subject to subpoena in an *investigation* or in an *"investigative" proceeding.* The *Mees* case arose out of a rate fixing hearing by the Public Utilities Commission of Minnesota. The witness was called to give testimony connected with the "adjudication" to be made by the Commission in that case. This complete distortion and misstatement of the rule and the nature of the

*Mees* case is the basic error in the entire decision of the court.

On page 11 of respondent's brief, respondent has again cited various authorities which deal with what petitioners refer to as "adjudicative" powers of administrative agencies, as distinguished from their "investigative" powers.

Respondent has cited the case of *Natural Gas Pipeline Co. v. Slattery* (1937), 302 U.S. 300. This case was dealt with at length on pages 15, 16 and 17 of the brief of petitioners before the Third District Court of Appeal. That case did not even involve an investigation. The case was a rate fixing proceeding before the Public Utilities Commission of the State of Illinois. The issue in that case was whether or not the pipe line company was subject to regulation by the Commission. The court held that it was. In the instant case it is conceded that the petitioners are not subject to regulation and that the proceeding in question was not an "adjudicative" proceeding.

The same is true of *Fleming v. Montgomery Ward & Co.*, which is a so-called "coverage" case. Montgomery Ward & Co. was held, in that case, to be subject to regulation by the Wage and Hour Administrator. In our briefs in the lower court, we have discussed at length the cases of *United States v. Darby* (1941), 312 U.S. 100; *Endicott Johnson Corp. v. Perkins* (1943), 317 U.S. 501; *Oklahoma Press Pub. Co. v. Walling* (1946), 327 U.S. 186, and *Crafts v. Federal Trade Commission* (C.A. 9th 1957), 244 F. 2d 882, reversed (Oct. 8, 1957), 2 L. Ed. 2d (Adv.) 23.

All of these were "coverage" cases and distinguishable from this case. Each case was decided upon the principle that the defendant was subject to regulation or came within a class that was subject to regulation, and therefore, the administrative agency was entitled to deal with the particular person or corporation as one so subject. If the factual investigation subsequently determined that the party was not subject to regulation, then the matter could be handled by judicial review.

The important distinction between an "investigative" and an "adjudicative" proceeding has been generally ignored in all of the considerations of this case by the lower courts and by respondent. Respondent, on page 13, attempt to reply to the argument of petitioners based upon the *Watkins* case, and in doing so, engage in some strange sophistry. We heretofore have referred the court to Section 15614 of the *California Government Code*, which provides for an automatic contempt and civil penalty upon the failure to produce the books and records. Petitioners contend that there should be some more certain or definite proceeding, or initation thereof, by whatever instrument may be used, to permit the taxpayer to know why and for what purpose his books and records are to be used. None is stated in the subpoena. There is no resolution of the board; no petition or complaint stating the purpose of the ex parte hearing. Respondent contends that our right to a mandamus proceeding avoids the necessity of making the decision to produce or not to produce them at our peril. The unfortunate

thing is that the mandamus proceeding has been decided against petitioners and petitioners are now required to produce the books and records. They have no further information as to the nature of the proceeding in which they are to be produced, or the purposes for which they are to be used, than petitioners had before bringing the mandamus proceeding.

We have pointed out heretofore that Section 11500 of the *Government Code* contains (in the Administrative Procedure Act of the State of California) a provision permitting all such subpoenas issued by administrative agencies to be challenged by simple refusal and a resulting order to show cause before a court of original jurisdiction wherein these matters can be inquired into. No such provision is contained in Section 15613 or 15614 of the *Government Code of the State of California* under which the subpoena in question has been issued.

Petitioners seriously urge this court to consider the character of the subpoena in question and the fact that it has to do with "investigative" powers which should be subject to the greatest scrutiny and limitation under the American system. Furthermore, the action being sustained by the decision of the court below is an enlargement of that power, so as to include a person not subject to regulation, requiring such person to appear at an ex parte hearing, to produce evidence, without having any knowledge at all of the issues or the purpose of such hearing. As previously indicated, it is our firm conviction that the affirmance of such procedure as lawful will place the stamp of

approval upon police state methods never before considered possible under our system of government.

Dated, Redding, California,
September 6, 1958.

Respectfully submitted,
CARR & KENNEDY,
LAURENCE J. KENNEDY,
*Attorneys for Petitioners.*

LAURENCE W. CARR,
*Of Counsel.*